

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MYKAL S. RYAN,

Plaintiff,

vs.

TIMOTHY M. HYDEN,

Defendant.<sup>1</sup>

CASE NO. 10-CV-1092 JLS (WVG)

**ORDER: GRANTING  
DEFENDANT'S MOTION TO  
DISMISS**

(Doc. No. 3)

Presently before the Court is Defendant's motion to dismiss for improper venue or, in the alternative, transfer for improper venue. (Doc. No. 3.) Also before the Court are Plaintiff's opposition and Defendant's reply. (Doc. Nos. 11, 12.) Having fully considered the parties' arguments and the law, the Court **GRANTS** Defendant's motion to dismiss for improper venue.

**BACKGROUND**

Plaintiff filed this pro se complaint on May 20, 2010.<sup>2</sup> (Doc. No. 1 (Compl.).) The gravamen

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<sup>1</sup> Defendant is named in both his individual capacity and in his capacity as trustee for the John and Christy Ryan Family Trust. (See Doc. No. 1 (Compl.) ¶¶ 2–3.)

<sup>2</sup> The Court notes that Plaintiff has filed three complaints in this District that all appear to arise from the same set of operative facts. See *Ryan v. Hyden*, Case No. 10-CV-1206 MMA (WVG); *Ryan v. Quick*, Case No. 10-CV-1326 MMA (WMc). Plaintiff named Mr. Hyden a defendant in a separate complaint, and Mr. Hyden moved to dismiss that action for improper venue. See *Ryan v. Hyden*, Case No. 10-CV-1206 MMA (WVG) (Doc. No. 3.). Judge Anello granted Mr. Hyden's unopposed motion. *Id.* (Doc. No. 6.).

1 of Plaintiff's complaint is that Defendant directed Lee M. Quick<sup>3</sup> to access Plaintiff's personal  
2 computer and retrieve Plaintiff's financial and personal information. (*See id.* ¶¶ 22–25.) Defendant  
3 allegedly used Plaintiff's personal information to contact third parties and "spread false factual  
4 information" about him, which ultimately caused Plaintiff's "Top Secret/Sensitive Compartmented  
5 Information (TS/SCI) clearance" to be suspended. (*Id.* ¶¶ 25–27.) Plaintiff asserts claims for  
6 violation of federal and state law, and for intentional infliction of emotional distress and defamation.<sup>4</sup>  
7 (*Id.* ¶ 28–56.)

8 The events alleged in Plaintiff's complaint took place in Contra Costa County and Alameda  
9 County, California, and York County, Virginia. (*See* Hyden Decl. ¶ 6; Compl. ¶ 18–27.) Defendant  
10 is a practicing attorney with his principal place of business in Contra Costa County, California.  
11 (Hyden Decl. ¶¶ 3, 6.) All of Defendant's acts, including his retention of Mr. Quick, were initiated  
12 from Defendant's business office in Contra Costa County, California. (*Id.* ¶¶ 6, 8.)

13 Defendant now moves for an order dismissing Plaintiff's complaint for improper venue or, in  
14 the alternative, transferring this matter to the Northern District of California. (Doc. No. 3.)

## **LEGAL STANDARD**

16 || Under 28 U.S.C. § 1391(b),

17 A civil action wherein jurisdiction is not founded solely on diversity of citizenship  
18 may, except as otherwise provided by law, be brought only in (1) a judicial district  
19 where any defendant resides, if all defendants reside in the same State, (2) a judicial  
district in which a substantial part of the events or omissions giving rise to the claim  
occurred . . . , or (3) a judicial district in which any defendant may be found, if there  
is no district in which the action may otherwise be brought.

21 A defendant may raise the defense of improper venue by way of a motion to dismiss under  
Federal Rule of Civil Procedure 12(b)(3). Once a defendant challenges venue, the plaintiff bears the

<sup>3</sup> Defendant retained Mr. Quick in his capacity as a Special Commissioner for the York County Circuit Court to sell property belonging to Plaintiff to satisfy California and Arizona state court judgments against Plaintiff. (See Compl. ¶¶ 18–20; see also Hyden Decl. ¶ 5; Doc. No. 3-3 (RJN) Ex. 2.)

<sup>4</sup> The Court notes Plaintiff's federal claims are premised on Defendant's alleged violations of federal criminal law. (See Compl. ¶¶ 28–40.) Similarly, Plaintiff brings two of his state claims under the California Penal Code section 502. (See *id.* ¶¶ 44–49.) Although not necessary to its decision, the Court questions whether these statutes provide any basis for civil liability. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (holding that federal criminal statutes provided no basis for civil suit).

1 burden of showing that venue is proper. *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d  
 2 491, 496 (9th Cir. 1979). In determining whether venue is proper, the Court may consider facts  
 3 outside the pleadings probative of the issue of venue. *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320,  
 4 324 (9th Cir. 1996).

5 If the Court determines venue is improper, it may dismiss the case, or if it is in the interest of  
 6 justice, the Court may transfer the case to any other district in which it could have been brought. 28  
 7 U.S.C. § 1406(a); *Dist. No. 1, Pac. Coast Dist. v. Alaska*, 682 F.2d 797, 799 n.3 (9th Cir. 1982).  
 8 Ultimately, the decision whether to dismiss or transfer rests in the Court's sound discretion. *See King*  
 9 *v. Russell*, 963 F.2d 1301, 1304–05 (9th Cir. 1992).

## 10 ANALYSIS

### 11 1. Defendant's Request for Judicial Notice

12 Defendant moves the Court to take judicial notice of three documents filed in Alameda County  
 13 Superior Court Case No. VP06290340: (1) an order suspending Plaintiff as trustee of the John and  
 14 Christy Ryan Family Trust (Ryan Trust) and directing Plaintiff to reimburse the Ryan Trust for losses  
 15 and attorney's fees; (2) a judgment against Plaintiff in the amount of \$939,508.47; and (3) an order  
 16 appointing Defendant as trustee of the Ryan Trust. (*See RJN Exs. 1–3.*) Although Plaintiff does not  
 17 directly oppose Defendant's request, Plaintiff contests the veracity and validity of these documents.  
 18 (*See Opp'n 8–16.*) Nevertheless, the Court finds that each of these documents is properly judicially  
 19 noticed. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244,  
 20 248 (9th Cir. 1992) (“We may take notice of proceedings in other courts, both within and without the  
 21 federal judicial system, if those proceedings have a direct relation to the matters at issue.” (internal  
 22 quotation marks omitted)). They are matters of public record and Plaintiff does not dispute their  
 23 authenticity. Accordingly the Court **GRANTS** Defendant's request for judicial notice.

### 24 2. Defendant's Motion to Dismiss or, in the Alternative, Transfer

25 Plaintiff as much as concedes that venue is improper in the Southern District of California.  
 26 Rather, Plaintiff seeks to lay venue in this District as a “reasonable accommodation for his disability,”  
 27 to wit, post traumatic stress disorder. (Compl. ¶ 14.) Plaintiff complains that “[a]ny other venue  
 28 would deny [his] participation in the trial and hearings.” (*Id.* ¶ 13.) However, it is well established

1 that Plaintiff “may have his ‘day in court’ without ever setting foot in a courtroom.” *Effron v. Sun*  
2 *Line Cruises, Inc.*, 67 F.3d 7, 11 (2d Cir. 1995); *see also Utoafili v. Trident Seafoods Corp.*, 2009 WL  
3 6465288, at \*6 (N.D. Cal. Oct. 19, 2009) (“Even if the Court were to presume a strong likelihood that  
4 Plaintiff would be unable to travel to Washington for trial herself, physical disability alone is generally  
5 not sufficient to conclude that a distant venue would effectively deprive a plaintiff of her day in  
6 court.”); *Hale v. Vacaville Housing Auth.*, 2009 WL 311399, at \*1 (N.D. Cal. Feb. 9, 2009)  
7 (“[A]lthough Hale states she has a ‘disability’ and problems understanding the English language, such  
8 circumstances do not provide a basis for venue in the Northern District.”). Plaintiff has not cited a  
9 single controlling authority for the proposition that his disability entitles him to the forum of his  
10 choosing without respect to 28 U.S.C. § 1391(b).<sup>5</sup> Accordingly, the sole question before the Court  
11 is whether to dismiss for improper venue or transfer this matter to another district in which it could  
12 have been brought.

Transfer is appropriate only if it is in “the interest of justice . . .” 28 U.S.C. § 1406; *see also Goldawr, Inc. v. Heiman*, 369 U.S. 463, 466–67 (1962). “[T]he interest of justice is not served by allowing a plaintiff [who] committed an obvious error in filing . . . in the wrong court, and thereby imposed substantial unnecessary costs on both the defendant and the judicial system, simply to transfer [his] action to the proper court . . . .” *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1201 (4th Cir. 1993). If a plaintiff deliberately chooses an improper forum and “expresse[s] no interest in transfer,” a district court does not abuse its discretion if it elects to dismiss instead of transfer. *King*, 963 F.3d at 1304–05; *see also Wood v. Santa Barbara Chamber of Commerce, Inc.*, 705 F.2d 1515, 1523 (9th Cir. 1983) (“Justice would not have been served by transferring Wood’s claims back to a jurisdiction he purposefully sought to avoid through blatant forum shopping.”).

23 Plaintiff deliberately filed this action in the Southern District of California, apparently with  
24 knowledge that venue would be improper. (*See Opp'n 19 ("My request for retaining venue in San*  
25 *Diego is as a reasonable accommodation for my PTSD disability.").*) Plaintiff expresses no interest

27       <sup>5</sup> Plaintiff asserts that “the Americans with Disabilities Act (ADA), the Rehabilitation Act[,]  
28 and California Rule [of Court] 1.100 ” entitle him to lay venue in the Southern District. (Opp’n  
19–21.) However, neither the ADA nor the Rehabilitation Act provides a basis for venue, and the  
California Rules of Court do not bind federal courts. Accordingly, Plaintiff’s reliance on these  
authorities is misplaced.

1 in transfer and suggests that he will not participate if this case is transferred to a proper venue. (See  
2 *id.* 22 (“The San Diego venue is the only venue that will allow me the opportunity to participate and  
3 to prosecute my case . . .”).) Plaintiff’s deliberate choice to file this case in an improper venue has  
4 imposed substantial costs on Defendant and the Court, requiring Defendant to bring and the Court to  
5 address the instant motion. Accordingly, the Court finds that transferring this case to a proper venue  
6 would not serve the interest of justice.

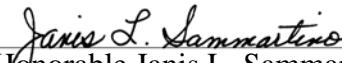
7 **CONCLUSION**

8 For the reasons stated, the Court **GRANTS** Defendant’s motion to dismiss for improper venue  
9 and **DENIES AS MOOT** Defendant’s alternative request to transfer for improper venue.

10 IT IS SO ORDERED.

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12 DATED: October 18, 2010

13   
Honorable Janis L. Sammartino  
14 United States District Judge

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